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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO.2272 of 2007
IN
CHAMBER SUMMONS NO. 602 OF 2007
IN
S.C.SUIT NO. 6805 of 1994

Shri Sharad Gajanan Ambole

2. Shri Gurunath Pundalika Ambole

3. Mrs. Sharada Gurunath Ambole
All r/at Room no. 10A, Ground floor,
Ram Mandir, G.D.Ambedkar Road,
Mumbai 400 012. ..Appellants
(original obstructionists)

v/s.

1. Smt. Gauramma Kumarappa Medar
(Deceased)

2. Shankar Kumarappa Medar
R/at 61-BG, Ferry Road, Madha Island,
Mumbai 400 061.

3. Gangappa Kumarappa Medar

4. Kankamappa Kumarappa Medar

5. Linganna Kumarappa Medar

6. Smt. Laxmi Arvind Uggera

7. Smt. Kanchamma Lingappa Medar

8. Siddlinga Kumarappa Medar

9. Nelkantha Kumarappa Medar

Orig.Plaintiffs no. 2 to 8 residing at c/o. Sanjivani
Milaya, New Bamboo Bazzar, Devanagiri Dist.Chitradurga,
State Karnataka, Original plaintiffs no. 3-9 through
their Constituted Attorney i.e. Plaintiff No.2 Shri
Shankar Kumarappa Medar ..Appellants

(No. 1 to 9 original plaintiffs)

10. Ulukuntappa Ullappa Naik
(died)

11. Smt. Mareka Kubera Naik

12. Nagesh Kubera Naik

13. Shekhar Kubera Naik

14. Raja Kubera Naik

15.Ashoka Kubera Naik

16. Hanumanta Ullappa Naik
All r/at. Room no. 10A,
Ground floor, Ram Mandir,
G.D.Ambekar Road,
Mumbai 400 012. ...Respondents
(no. 11 to 16 original
defendants)

Shri G.S.Godbole with Ashok Tajane for the Appellants

Mr. Vivek Gupta for Respondent nos. 2 to 9

CORAM : ANOOP V. MOHTA,J.
DATED : 12th October, 2007

ORAL JUDGEMENT

The present appeal is by obstructionists nos. 1, 2 and 3 against an order dated 3-9-2007 passed by the Bombay City Civil Court at Bombay (the executing Court) in Chamber summons no. 602 of 2007 in civil suit no. 6805/1994 as chamber summons taken out by the decree holder against the obstructionists to the execution of the decree in the judgement has been allowed by further observing that the obstructionists are disentitled to any right and interest in the property.

2. The Plaintiff/decree holder filed the suit against the defendants for eviction and possession. The plaintiff is original tenant of the premises i.e. 10A. The suit was against the judgement debtors by holding them to be the trespassers. The first appeal no. 630/1998 filed by the judgement debtor was dismissed on 11-2-2005 and further the said dismissal was confirmed by the Supreme Court on 18-3-2005. While dismissing the SLP (Special Leave Petition) the original defendants/judgement debtors were given time till 30-9-2005 to vacate the said premises upon filing an usual undertaking within four weeks. The said undertaking was also filed on behalf of all but signed by only one defendant.

3. On 27-9-2005 in the meantime, the obstructionists have acquired tenancy rights directly from the landlord who were not party to a suit and/or any such proceedings and even in the Supreme Court. The said lease/deed has been duly registered and also placed on record alongwith an affidavit in reply to this chamber summons. The obstructionists have been in possession of the said premises since 27-9-2005 i.e. date of tenancy agreement. Therefore, when the application was moved for execution, the obstructionists objected the same that resulted into present chamber summons in question.

4. Heard finally by consent of both the parties. The learned Executing Court after considering the material placed on record without giving any opportunity to the parties to lead evidence held that the evidence of landlord is not necessary to be recorded before a legal adjudication of the chamber summons and further observing that the obstructionists have no say to the claim of the decree holder with regard to the execution of decree and lastly held that these proceedings are not barred by limitation and thereby allowed the chamber summons.

5. Admittedly, the obstructionists are not claiming any rights or interest in the property from the plaintiff/ decree holder. The landlord was not party to any of these proceedings including the undertaking given before the Hon'ble Supreme Court as referred above. Admittedly, obstructionists are in possession of the property since 27-9-2005 based upon the registered tenancy deed. Admittedly, the decree holder/plaintiff has not raised any objection to the contents of the said deed, the execution of the said and also the possession of the premises by the obstructionists.

6. In this background, considering the existing provisions and scheme of order 21 rule 97 of Civil Procedure Code (C.P.C.) there remain no doubt that the

executing Court need to give full opportunity to the person interested in the property basically the immovable property in question. The obstructionists being in occupation of the property is definitely person interested in the property/premises.

7. I have already held in Second Appeal no 764/2005 decided on 3-10-2005 (Sardar Aasanbhai Attar v/s. Usman P. Attar) that Executing Court must give full opportunity to the "third person" and/or "any person" who has right or interest in the property. The obstructionists are undisputedly in possession of the property, have rights and interests in the suit premises.

8. Even as per section 47 of the CPC and in view of the above provisions, a separate trial is barred. It means the person like obstructionists have no other remedy available to adjudicate their claim and/or rights with regard to property/premises in question. In this background, I am of the view that the obstructionists are definitely entitled to have full opportunity to put their case including the evidence of the landlord, if they so desire. There is nothing on record to show that they have declined to lead evidence of landlord and/or such other evidence. The learned counsel appearing for the Respondent decree holder contended that in earlier

chamber summons obstructionists have declined to lead any evidence. However, by order dated 24-1-2007 in earlier first appeal no. 201/2007 filed by the obstructionists while allowing the obstructionists to withdraw the chamber summons no. 331/2006, granted liberty to file fresh chamber summons for the same relief and kept all contentions open of the parties on merits.

9. Even otherwise apart from the above provisions t is necessary before passing any adverse order specially in reference to the possession of the immovable properties, that an opportunity need to be given to the obstructionists.

10. The principle of natural justice just cannot be overlooked. The rights of the obstructionists through the landlord even based upon the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act) Sections 5(4), 5(11)(c)(i) and (ii) as sought to be contended based upon **1988 Maharashtra Rent Control Judgement -709 Smt. Ramkali Rambharaose Katiyar and others v/s. Bamdulare Shivprasad Katiya,** need detailed reasonings in either way. The action of landlord of creating such tenancy, without evicting the decree holder/plaintiff, whether it is in breach of such provisions of the Bombay Rent Act, sought and held

above, also need detail reasoning because obstructionists are not claiming any rights whatsoever through the decree holder and/or through the judgement debtors.

11. The judgement relied by the City Civil Court Judge, in the case of **Jagdish v/s. Chandrapal 2007 (1) Maharashtra Law Journal 402** is distinct and distinguishable on facts itself. The obstructionists in the present case cannot be said to be tresspassers and/or their occupation cannot be said to be unauthorised unless decided and declared by the competent Court accordingly.

12. The endeavour was of the Executing Court/ Judge to see that decree holder should get the fruit of his decree in a suit of 1994. The learned counsel appearing for the decree holder as submitted that in such cases where there is no dispute about even the existance of such tenancy or registered documents of the tenancy, there is no question of leading any evidence, is unacceptable. The finding that the evidence in this matter is absolutely unnecessary is wrong. It is further wrong committed by the Executing Court by observing that the obstructionists have failed to prove any legally recognizable right.

13. Taking all this into accoun and considering the scheme and purpose of provisions of section 47 and order 21 rule 97 of Civil Procedure Code, I am of the view that full opportunity should be given to the obstructionists to put up his case, in accordance with law.

14. In the result, the impugned order dated 3-9-2007 is quashed and set aside. The matter is remanded back. The Executing Court, after giving full opportunities to both the parties and uninfluenced by the observations made in this order, pass appropriate order according to law. The parties to appear before the Executing Court on 1-11-2007. The Executing Court in the facts and circumstances of the case shall dispose off the present Chamber summons preferably within six months.

15. The appeal is allowed accordingly. No order as to costs.

[ANOOP V. MOHTA,J.]